

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION**

DAPHNIE NEWMAN BOUDY

PLAINTIFF

V.

CIVIL ACTION NO. 5:23-cv-30-KS-BWR

**MCCOMB SCHOOL DISTRICT,
et al.**

DEFENDANTS

AMENDED ORDER

Plaintiff initiated this action by filing her Complaint [1] on April 24, 2023. Defendants filed their Answer [6] on May 16, 2023. On December 26, 2023, James Harvey, McComb School District, and McComb School District Board of Trustees (“Defendants”) filed a Second Motion to Dismiss [76]. The Court then set deadlines for the Plaintiff’s response and Defendants’ reply to the motion in its Order [78]. In the same Order after noting Plaintiff’s right to amend her complaint as a matter of course under Federal Rule of Civil Procedure 15(a)(1)(B), the Court said if the Plaintiff amends her complaint, “the motion will be deemed moot....” [78]. Plaintiff then filed an Amended Complaint [80] and a response to the motion, [81], [82], on January 16, 2024.

Although the Court’s Order [78] stated that an amended complaint would moot the motion to dismiss [76], this was an error. *See* Fed. R. Civ. P. 15(a)(2). Because Plaintiff had no right to amend her complaint as a matter of course and she did not request leave to do so, the Amended Complaint [80] filed by Plaintiff on January 16, 2024, is hereby stricken by the Court. *The Clerk of Court is hereby instructed to note at docket entry [80] that the Amended Complaint [80] is stricken.* However, if the Plaintiff still wishes to file an amended complaint, she may file a motion requesting the Court’s leave to do so under Rule 15(a)(2).

To provide fairness to both parties, the Court extends the deadlines to file briefs on the motion, if the parties wish to do so. Accordingly, Plaintiff may file an amended response to Defendants’ Second Motion to Dismiss, [76], [77], on or before **February 28, 2024**. Fed. R. Civ. P. 6(a); L.U. Civ. R. 7(b)(4). Defendant may file a reply on or before **March 6, 2024**. *Id.* Any party requesting an extension of time must file a motion for such

prior to the deadline's expiration and advise the Court whether the request is opposed. L.U. Civ. R. 7(b)(4), (10). The original and reply memoranda together shall not exceed a total of thirty-five (35) pages, and the amended response memorandum shall not exceed thirty-five (35) pages. L.U. Civ. R. 7(b)(5). If a party requires more pages to fully respond, it must seek leave to do so and advise whether such request is opposed.

SO ORDERED AND ADJUDGED this 14th day of February, 2024.

/s/ Keith Starrett
KEITH STARRETT
UNITED STATES DISTRICT JUDGE